

**CERTIFIED FOR PUBLICATION**  
**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**FOURTH APPELLATE DISTRICT**  
**DIVISION THREE**

ELIAZAR ZARAGOZA,

Plaintiff and Appellant,

v.

MARIA IBARRA,

Defendant and Respondent.

G040242

(Super. Ct. No. 06CC07780)

ORDER MODIFYING OPINION; NO  
CHANGE IN JUDGMENT

The opinion, filed June 8, 2009, is hereby modified in the following particulars:

1. After the words “undisputed facts” ending the fourth full paragraph on page 3, insert the following new footnote 2:

While the summary judgment motion used the phrase “plaintiff assumed the risk” in one of its subheadings, the *substance* of the motion was not one of classic assumption of risk. Rather, it was that Zaragoza had been solely responsible for his own

injuries, and, in that regard, also asserted that Ibarra was not liable under “general negligence principles.” The briefing in this court followed in that same train.

2. Correspondingly renumber all remaining footnotes.
3. Change the heading on page 10 of the slip opinion to:  
B. Absence of Negligence

These modifications do not affect the judgment.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

O’LEARY, J.